

REMARKS/ARGUMENTS

Claims 1-4, 6, 7, 11-14, 16-21, 23, and 24 are pending in this Application.

In the Office Action, claims 1-4, 6, 7, 11-14, 16-21, 23, and 24 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Applicants' background and in further view of U.S. Patent No. 6,609,112 (hereinafter "Boarman") and U.S. Patent Application Publication No. 2002/0147675 (hereinafter "Das").

Claim Rejections Under 35 U.S. C. § 103(a)

Applicants respectfully traverse the rejections to claims 1-4, 6, 7, 11-14, 16-21, 23, and 24 and request reconsideration and withdrawal of the rejections under 35 U.S.C. § 103(a) based on Applicants' background, Boarman, and Das. Applicants respectfully submit that Applicants' background, Boarman, and Das, either individually or in combination, fail to disclose one or more of the claim limitations recited in each of claims 1-4, 6, 7, 11-14, 16-21, 23, and 24. These differences, along with other differences, establish that the subject matter as a whole of claims 1-4, 6, 7, 11-14, 16-21, 23, and 24 would not have been obvious at the time of invention to a person of ordinary skill in the art.

For example, Applicants' background, Boarman, and Das, either individually or in combination, fail to disclose or suggest the limitations recited in claim 1 of "determining, with the one or more processors associated with the one or more computer systems, whether the first bid marks an end to a first phase of the two-phase auction and a beginning of a second phase of the two-phase auction" and "accepting, based on a determination made by the one or more computer systems that the first bid marks an end to the first phase of the two-phase auction and a beginning of the second phase of the two-phase auction, successive bids for the item that are placed at the network-based auction location later in time and that are higher than the first bid within a predetermined time interval from at least one of the first bidder and the at least one additional bidder with the one or more processors associated with the one or more computer systems."

The Office Action alleges that both Boarman and Das disclose two or more phase actions. However, neither discloses that in a first phase of an auction asks are periodically decreased while receiving lower and lower bids until a current bid marks an end to the first phase and then in a second phase asks are increased while receiving higher and higher until the auction ends as recited in the above limitations.

In Das, the auctioneer maintains bid and ask queues in a double auction. (This is the meaning of a double auction where bids and asks are received simultaneously which is different than the recited two phase auction). In Das, a bidder at any time can make higher or lower bids. However, only a higher bid than a current bid is placed on the queue. The previously highest bid goes into second place. Lower than current bids are naturally discarded by not being placed on the bid queue. In Das, a seller at any time can make higher or lower asks. However, only a lower ask than the current ask is placed on the queue. The previously lowest ask goes into second place. Higher than current asks are naturally discarded by not being placed on the ask queue.

The Office Action acknowledges on page 4 that Das is directed to “an important class of continuous double auction.” Thus, Das does not disclose the recited two-phased auction in claim 1 because in Das the auction is continuous such that asks only lower in a first phase and bids only rise in second phase as recited. The auction in Das continuously operated by having the auctioneer maintain the two queues. Thus, previous best positions still can rise to the top of their respective queues for clearance. In Das, when the current highest bid is cleared, the next queued bid rises to the top either to be either outbid again or cleared. The similar happens with the ask queue. However, at no point does Das accept low bids into the bid queue as ask prices decrease as recited in claim 1 where “periodically decreasing and posting, with the one or more processors associated with the one or more computer systems, the current asking price until information associated with a first bid received from a first bidder over the computer network at the then current asking price is received at the one or more computer system.”

Accordingly, Applicants respectfully submit that Applicants’ background, Boarman, and Das fail to disclose each and every claim limitation as recited in claim 1.

Applicants further respectfully submit that none of the cited references cure the above-discussed deficiencies of Applicants' background, Boarman, and Das, and thus, claim 1 is allowable over the cited references.

Applicants respectfully submit that the other pending independent claims are allowable for at least a similar rationale as discussed above for the allowability of claim 1, and others. Applicants respectfully submit that the dependent claims that depend directly and/or indirectly from the independent claims, are also allowable for at least a similar rationale as discussed above for the allowability of the independent claims. Applicants further respectfully submit that the dependent claims recite additional features that make the dependent claims allowable for additional reasons.

Claim Rejections Under 35 U.S.C. § 112, second Paragraph

Applicants respectfully traverse the rejections to claims 1-4, 6, 7, 11-14, 16-21, 23, and 24 and request reconsideration and withdrawal of the rejections under 35 U.S.C. § 112, second paragraph as allegedly being indefinite.

The Office Action alleges that the two phase auction is unclear. In particular, the Office Action assumes on page 2 that after the first phase executes "the auction is over and there is a trade." Applicants respectfully request that the Office Action clarify this interpretation. Nowhere does claim 1, for example, recite that "the auction is over and there is a trade" solely after completing the first phase. As recited, only the first phase ends, not the auction. Claim 1 simply recites that after a first phase of an auction ends, a second phase begins and not does not recite that the auction ends or a new auction begins as questioned on page 2.

Begin auction → first phase (ask price periodically lowered) → recited determination ends first phase → second phase (accept higher bid prices) → recited awarding item to highest bidder ends second phase and auction.

As recited, in a first phase the ask price is periodically lowered until a determination is made that a first bid received at the then current ask price marks the end of the first phase. For example, the ask price could start at \$100 and be lowered by \$10 until someone bids at \$50. Then, as recited in the second phase, higher successive bids than \$50 can be

accepted. Someone may bid \$55 or higher. As recited, the auction clearly ends when the item is awarded to a highest bidder.

The Office Action questions on page 2 “how could this mark the beginning of another auction.” Applicants submit that another auction has not started, but merely another phase. As recited, in the first phase the ask price is lowered until a determined is made that a bid at the current ask price ends the first phase. Then, as recited, higher bids are accepted that compete with the bid at the current ask price. The auction as recited ends by awarding the item to a highest bidder. As evidenced by the alleged prior art, there are many types of auctions with different rules. Buyers and sellers are bound by the rules of the auction. Accordingly, if the rules of the auction dictate a two phase auction as recited, the auction would not be over merely after the first phase, but when the second phase was completed as recited.

Applicants respectfully traverse the rejections to claims 1-4, 6, 7, 11-14, 16-21, 23, and 24 and request reconsideration and withdrawal of the rejections under 35 U.S.C. § 112, second paragraph as being indefinite.

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Examining Group 3694

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CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance and an action to that end is respectfully requested.

Further, the Commissioner is hereby authorized to charge any additional fees or credit any overpayment in connection with this paper to Deposit Account No. 20-1430.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 925-472-5000.

Respectfully submitted,

/Sean F. Parmenter, Reg. No. 53,437/
Sean F. Parmenter
Reg. No. 53,437

TOWNSEND and TOWNSEND and CREW LLP
Two Embarcadero Center, Eighth Floor
San Francisco, California 94111-3834
Tel: 925-472-5000
Fax: 415-576-0300
SFP:lls
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